

Department of Veterans Affairs

§ 14.516

that the proper judge receives a signed copy of the letter before default day. The letter will point out that there is no valid service of process on the Secretary of Veterans Affairs but will not base the delay on that alone.

(b) The General Counsel or each Regional Counsel representing the General Counsel is the attorney of the Secretary of Veterans Affairs for all purposes of 38 U.S.C. 3720 and, as such, is authorized to represent the Secretary in any court action or other legal matter arising under said statutory provisions. Said authorization is subject to any applicable statutes and Executive orders concerning claims of the United States. A Regional Counsel may enter appearance in such cases, subject to the provisions of §§ 36.4282 and 36.4319 of this chapter and paragraph (a) of this section. Each Regional Counsel is authorized to contract for the employment of attorneys on a fee basis for conducting any action arising under guaranty or insurance of loans or direct loans by the Department of Veterans Affairs; or for examination and other proper services with respect to title to and liens on real and personal property, material incident to such activities of the Department of Veterans Affairs, when, such employment is deemed by the Regional Counsel to be appropriate, the authority delegated to the Regional Counsel may be redelegated with the approval of the General Counsel.

(c) The General Counsel and each Regional Counsel, in carrying out their duties as authorized in paragraph (a) or (b) of this section, are authorized: (1) To contract for and execute, for and on behalf of the Secretary, any bond (and appropriate contract or application therefor) which is required in or preliminary to or in connection with any judicial proceeding in which the Regional Counsel is attorney for the Secretary, and to incur obligations for premiums for such bonds and (2) to do all other acts and incur all costs and expenses which are necessary or appropriate to further or protect the interests of the Secretary in or in connection with prosecuting or defending any cause in any court or tribunal within the United States, which cause arises out of or incident to the guaranty or

insurance of loans, or the making or direct loans by the Department of Veterans Affairs, pursuant to 38 U.S.C. ch. 37.

(d) Except in an emergency, no Regional Counsel will initiate action for appellate review without prior approval by the General Counsel. These limitations do not preclude the filing of a motion for a new trial, appeal to intermediate court with hearing *de novo*, the giving of notice of appeal, reserving of bills of exception, or any other preliminary action in the trial court which may be necessary or appropriate to protect or facilitate, the exercise of the right of appellate review, nor do they preclude the taking of appropriate steps on behalf of the Secretary as appellee (respondent) without prior reference to the General Counsel. Upon the conclusion of the trial of a case, the Regional Counsel will report the result thereof to the General Counsel with recommendation as to seeking appellate review if the result reported is adverse to the position of the Department of Veterans Affairs in the litigation. The reporting Regional Counsel who recommends appellate review will include as a part of the communication, or in exhibits attached: (1) A summary of the evidence; (2) a summary of the law points to be reviewed; (3) citations of statutes and cases; (4) statements of special reasons for recommending appellate review; (5) time limitations for the action recommended; (6) requirements, if any, respecting printing of the record and briefs; (7) the estimated total expenses to be incurred by reason of the appeal, reporting separately the estimated costs for printing the brief and record so that authority for printing may be granted in accordance with the prescribed procedure, MP-1, part II, chapter 9;¹ and (8) the recommendation or a statement as to nonrecommendation by the Loan Guaranty Officer.

[42 FR 41411, Aug. 17, 1977]

§ 14.516 Escheat and post fund cases.

In any case in which the Department of Veterans Affairs is entitled to possession of assets or property under the

¹ Available in any Department of Veterans Affairs facility.

§ 14.517

38 CFR Ch. I (7–1–12 Edition)

escheat provisions of 38 U.S.C. 5502(e), the gifts provisions of 38 U.S.C. ch. 83 or the General Post Fund provisions of 38 U.S.C. ch. 85, the Regional Counsel will endeavor to obtain possession of such assets or property in any manner appropriate under local procedure and practice, other than litigation. This procedure would include exploratory inquiry of the person having custody or possession of the assets or property for the purpose of determining whether the person would be willing to turn over the property to the Department of Veterans Affairs without litigation. If unsuccessful in this effort, a complete report will be submitted by the Regional Counsel to the General Counsel so that appropriate action may be taken to obtain the assistance of the Department of Justice in the matter.

[42 FR 41411, Aug. 17, 1977]

§ 14.517 Cases affecting the Department of Veterans Affairs generally.

Regional Counsels will establish and maintain such close liaison with the State and Federal courts as to insure that notice will be afforded the Department of Veterans Affairs on all cases affecting the Department of Veterans Affairs. Such information will be forwarded to the General Counsel promptly in every case.

[42 FR 41411, Aug. 17, 1977]

§ 14.518 Litigation involving beneficiaries in custody of Department of Veterans Affairs employees acting in official capacity.

(a) *Service of process generally.* An employee, at a field facility, served with a writ of habeas corpus involving a beneficiary of the Department of Veterans Affairs in the employee's custody will immediately notify the Regional Counsel of the region in addition to taking such steps as in his or her judgment are necessary for self protection.

(b) *Habeas corpus writs.* (1) If a Director of a Department of Veterans Affairs hospital concerned advises that, according, to current medical opinion, hospitalization is necessary for the veteran's safety or the safety of others, the Regional Counsel will vigorously oppose the writ at the trial court level. If the writ is granted, no further action

will be taken unless so instructed by the General Counsel.

(2) If the medical opinion is that hospitalization is not required for the veteran's safety or the safety of others but continued treatment is clearly indicated in the veteran's interest, the Regional Counsel will assure that the court issuing the writ is so informed and will abide by the court's decision.

(3) If the medical opinion is that there is no danger of self injury to the veteran or others and the need for continued treatment is not clearly demonstrated, the Regional Counsel will advise the Director of the hospital concerned that the veteran should be released and will notify the veteran's attorney of the planned discharge. These cases will be handled informally to the extent practicable.

(4) Involuntary confinement of mentally ill patients in Department of Veterans Affairs installations is predicated upon the law of the State in which the installation is located. In the event the writ is filed in Federal Court, the Regional Counsel will cooperate with the U.S. Attorney to the end that the case is removed to the appropriate State court.

[42 FR 41411, Aug. 17, 1977, as amended at 61 FR 7216, Feb. 27, 1996]

PROSECUTION

§ 14.560 Procedure where violation of penal statutes is involved including those offenses coming within the purview of the Assimilative Crime Act (18 U.S.C. 13).

The Department of Justice, or the U.S. Attorneys, are charged with the duty and responsibility of interpreting and enforcing criminal statutes, and the final determination as to whether the evidence in any case is sufficient to warrant prosecution is a matter solely for their determination. If the Department of Justice or U.S. Attorney decides to initiate action, the Regional Counsel will cooperate as may be requested. The Regional Counsel will promptly bring to the attention of the General Counsel any case wherein he or she is of the opinion that criminal or civil action should be initiated notwithstanding a decision by the U.S. Attorney not to bring such action; any